

VI. Filing Your Brief

You should make your arguments about your appeal in your opening brief. You will have the opportunity to file either an informal or a formal brief, but not both. All briefs must comply with the Federal Circuit Rules and the Federal Rules of Appellate Procedure (Rules 28, 30, 31, and 32). Briefs must be received by the Clerk's Office by mail or hand delivery.

[Forms 17-18](#) on the court's website provide sample brief covers.

To set accurate deadlines, the Clerk's Office asks that you file a notice as soon as possible advising whether you intend to file a formal or informal brief because the deadlines for each brief are different. FCR 31. In unrepresented cases, the Clerk's Office presumes you will file an informal brief unless otherwise stated.

A. Informal Brief

1. When to File an Informal Brief

In a petition for review or appeal from a vaccine case from the U.S. Court of Federal Claims, an agency, a board, or a commission, you must file an informal brief within 21 days after the certified list or index is served. In an appeal from a court, you must file an informal brief within 21 days after the appeal is docketed. The other party may file either an informal brief within 21 days or a formal brief within 40 days after service of your informal brief. FCR 31(e).

If you file a brief before the certified list or index is served and filed, the other party's time runs from service of the certified list or index. You may choose to file a reply brief within 14 days after service of the other party's brief. FCR 31(e)(3).

2. Informal Brief Requirements

You must submit three copies of your opening informal brief to this court. The court prefers that one copy be unbound but secured with a staple, binder clip, or other removable means. The court prefers that the other copies be securely bound along the left margin to ensure that the bound copy will not loosen or fall apart. The bound copies should lie flat when open, and the court discourages ring-type bindings, plastic or metal bindings, and bindings that protrude from the front or back covers. The court asks that externally positioned staples be covered with tape. FCR 31(e)(4) and FCR 32 Practice Notes.

You may file an informal brief (three copies) using [Forms 11, 11A, 12, 13, 14, 15, or 16](#) (depending on the type of case).

The informal brief form is the only permissible substitute for the formal brief required by the Rules. Each form contains instructions for preparing and filing an informal brief. Please remember to complete all sections of the form.

An informal brief should be typewritten, but block printing or legible handwriting is permitted. The informal brief, together with any extra pages needed for answers that will not fit on the form, may not exceed 30 typewritten, double-spaced pages with 1-inch margins, or their equivalent in content. Continuation pages must be single-sided and use 8.5" x 11" paper. Any typed pages must use a 14-point font size or larger.

Your informal brief and continuation pages must be filed using either [Forms 11, 11A, 12, 13, 14, 15, or 16](#) (depending on the type of case) and include the following:

- Your case number and case name
- The title of the filing (Informal Opening Brief)
- Your answers to all form questions
- Your signature and the date
- Certificate of service (only complete a separate page if there is not enough space on the form.)
- An appendix consisting of, at a minimum, the judgment(s), opinion(s), or order(s) being appealed.

If you file the informal brief form and do not submit any extra pages needed for answers, the form will be considered your brief. Any documents submitted after the filing of your brief that you wish to have considered as your brief or with your brief must be submitted with a motion to replace your brief or a motion to supplement the brief.

3. Appendix to an Informal Brief

The appendix to an informal brief must contain the judgment and opinion of the trial court or the final order of an administrative agency. The initial decision of the administrative judge must also be included in the appendix in a Merit Systems Protection Board case. Other materials that are part of the record may be included if you refer to them in your brief. You should file three copies of the informal appendix. FCR 30(i) and FCR 24 Proceeding on Original Record Practice Note.

B. Formal Brief

1. When to File a Formal Brief

In a petition for review or appeal from a vaccine case from the U.S. Court of Federal Claims, an agency, board, or commission, you must file a formal brief within 60 days after the certified list or index is served. In an appeal from a court, you must file a formal brief within 60 days after the appeal is docketed. The other party must file a formal brief within 40 days of service of your formal brief or the certified list, whichever is later.

Any reply must be in the form of a formal reply brief and filed within 14 days of service of the other party's brief.

2. Formal Brief Requirements

If you elect to file a formal brief, the brief and appendix must comply with the strict requirements of the FRAP and FCR or the brief and appendix will not be accepted.

Please refer to the following requirement guides at

<http://www.cafc.uscourts.gov/contact/clerks-office/filing-resources>:

- [Quick Reference: Formal Brief Requirements](#)
- [Quick Reference: Appendix Requirements](#)

You must submit six copies of your opening formal brief to this court. The court prefers that one copy be unbound and the other copies be securely bound. The bound copies should lie flat when open, and the court discourages ring-type, plastic, and metal bindings, and bindings that protrude from the front or back covers. The court asks that externally positioned staples be covered with tape. FCR 28(g)(2) and Rule 32 Practice Notes.

3. Appendix to a Formal Brief

You must file six paper copies of an appendix with the court and one paper copy must be served on each of the other parties of record. The Clerk of Court is authorized to dismiss the case if you fail to file an appendix. FCR 30(a)(8).

A complete list of documents to include in your appendix can be found under Rule 30 of both the FRAP and FCR. You must make sure to include the entire docket sheet, certified list, or index from the proceedings below; the initial and final decision of the Merit Systems Protection Board; the final decision of another agency, board, or commission; the judgment and

opinion of the trial court; or the rule or rules that are the subject of your petition for judicial review of the Veteran's Affairs rulemaking. If your case involves a patent, you must also include a copy of the patent in its entirety. You may include other record material in your appendix to the extent you refer to that material in your brief.

If you need access to the original record of the agency, board, commission, or court proceedings, you must contact that agency, board, commission, or court because the original record is not forwarded to this court. FCR 11(a) and 17(a).

C. Confidential Information

If any part of the record was subject to a protective order at the trial level, read the Federal Circuit Rules about confidential information. FCR 11(c), 11(d), 11(e), 17(d)(2), 17(e), 17(f), 17(g), 27(m), 28(d), 30(b)(4)(B), and 30(h). It is your responsibility to review the rules to understand what impact the protective order will have on your appeal.

If you need to identify personal information or discuss information subject to a protective order in your brief, you must file two separate, clearly labeled briefs: (1) a confidential brief and (2) a nonconfidential brief. In your confidential brief, highlight or surround with brackets all confidential information. In your nonconfidential brief, black out any confidential material that is highlighted or bracketed in the confidential brief.

Only one paper copy of a nonconfidential version of a brief should be provided to the Clerk's Office. You must submit three copies of the confidential version of an informal brief or six copies of the confidential version of a formal brief. FCR 28(d).

D. Dismissal for Default

If you fail to file a brief or comply with other rules, the Clerk's Office may dismiss your case. FCR 31(d). However, if the appellee or respondent fails to comply with the rules, you are not entitled to the relief you seek solely by reason of that noncompliance. FRAP 31(c).

E. Filing a Reply Brief

After the other party has filed a response to your brief, you have the option to submit a reply brief within 14 days. FRAP 31(a) and FCR 31(e)(3). You are **NOT** required to file a reply brief. If you choose to file one, you must follow the same format and rules as with your opening brief except that your reply brief must be 15 pages or shorter. FRAP 28(c). The court does not have an informal reply brief

form. You may use the sample brief cover forms (Forms 17-18) as a template for your reply brief.

F. Briefs Not in Compliance with the Rules

The Clerk's Office may refuse to file any brief that has not been prepared in conformity with the Rules. FCR 32(a). If you receive a notice that your brief is not in compliance with the rules, read the notice carefully. It will explain why your brief is not in compliance, how to fix it, and when your corrected brief is due.

Once you have corrected your brief, file three copies of the corrected brief (two bound, one unbound) and title them "Corrected Informal Brief" or "Corrected Brief" to assist with processing.

The common reasons a brief is rejected are:

- Failure to use an informal brief form or use of the wrong form
- Incomplete informal brief form
- Failure to sign informal brief form
- Illegibility
- Brief form includes an attached argument that goes over the 28-page limitation (two-page informal brief with 28 continuation pages)
- Multiple briefs filed
- Brief filed late

G. Oral Argument

Oral argument is not automatic in every case. To request oral argument, please indicate on your informal brief form that you desire oral argument. Attach a separate notice requesting oral argument and include the reasons why argument will aid the panel in deciding your case. You may also send a motion to the Clerk's Office requesting permission to argue. Requests for oral argument should be clearly labeled on the first page of the document.

1. Memorandum in Lieu of Oral Argument

If it is determined the panel will hear your case without oral argument, you will be given an opportunity to file a memorandum in lieu of oral argument. The memorandum must be no longer than five pages and may explain any other issues you wish to bring to the court's attention.

Additionally, if your case is scheduled to be submitted on the briefs and you did not previously file a reply brief, you can file a reply brief within 14-days after the notice that the appeal will be submitted on the briefs. FCR 34(a).

2. Submitted on the Briefs

If your case is not scheduled for oral argument, it will be scheduled for submission to a panel on the briefs and neither party will be able to present argument to the panel. There will be no discussion or presentation of your case in court on the day your case is scheduled for submission, and you are not required to be in attendance.